

## DEPARTMENT OF STATE REVENUE

Revenue Ruling # 2022-04ST  
August 25, 2022

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the department's official position concerning a specific issue.

## ISSUES

**Sales and Use Tax - Sales of Medical Devices to Nonprofit Health Care Facilities**

Authority: [IC 6-2.5-1-23](#); [IC 6-2.5-2-1](#); [IC 6-2.5-5-8](#); [IC 6-2.5-5-18](#); [IC 6-2.5-5-25](#); [45 IAC 2.2-5-27](#); [45 IAC 2.2-5-55](#); *Indiana Dept. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dept. of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); Sales Tax Information Bulletin #10 (May 2022).

A taxpayer ("Company") is seeking a determination regarding whether the sale of its medical devices to nonprofit health care facilities located in Indiana is exempt from Indiana sales tax.

## STATEMENT OF FACTS

Company is based outside of Indiana. Company manufactures and sells various medical devices. Company sells its devices to nonprofit health care facilities located in Indiana. Company will be selling a suite of devices to be used for a specific medical procedure. There are eighteen separate devices within this suite. Some of the devices are reusable, while others are not.

## DISCUSSION

Company requests that the Department find that the suite of devices is exempt from Indiana sales tax because it will be sold to nonprofit health care facilities. Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. [IC 6-2.5-2-1\(a\)](#). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. [IC 6-2.5-2-1\(b\)](#). In general, all purchases of tangible personal property are subject to sales and/or use tax unless an enumerated exemption from sales and/or use tax is available.

In applying any tax exemption, the general rule in Indiana is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dept. of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). A statute which provides a tax exemption is strictly construed against the taxpayer. *Indiana Dept. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 100-101.

[IC 6-2.5-5-25](#) provides an exemption for purchases made by a nonprofit. It states the following in relevant part the following:

(a) Transactions involving tangible personal property, accommodations, or service are exempt from the state gross retail tax, if the person acquiring the property, accommodations, or service:

(1) is any of the following types of organizations:

...

(D) A:

(i) hospital licensed by the state department of health;

(ii) shared hospital services organization exempt from federal income taxation by Section 501(c)(3) or 501(e) of the Internal Revenue Code;

...

if the taxpayer is not organized or operated for private profit or gain;

(2) uses the property, accommodations, or service to carry on or to raise money to carry on its not-for-profit purpose; and

(3) is not an organization operated predominantly for social purposes.

...

(c) To obtain the exemption provided by this section, a taxpayer must file an application for exemption with the department not later than one hundred twenty (120) days after the taxpayer's formation. In addition, the taxpayer must file a report with the department on or before the fifteenth day of the fifth month every five (5) years following the date of its formation. The report must be filed electronically with the department in the manner determined by the department. If a taxpayer fails to file the report, the department shall notify the taxpayer of the failure. If within sixty (60) days after receiving such notice the taxpayer does not provide the report, the taxpayer's exemption shall be canceled. However, the department may reinstate the taxpayer's exemption if the taxpayer shows by petition that the failure was due to reasonable cause.

The second part of the test at [IC 6-2.5-5-25\(a\)](#) is that the person acquiring the property "uses the property . . . to carry on or to raise money to carry on its not-for-profit purpose." [45 IAC 2.2-5-55\(b\)\(3\)](#) further provides that:

The article purchased must be used for the same purpose as that for which the organization is being exempted. Purchases for the private benefit of any member of the organization or for any other individual, such as meals or lodging, are not eligible for exemption.

Sales Tax Information Bulletin #10 (May 2022) provides additional guidance on this topic as follows:

The article purchased must be used for the same purpose as that for which the organization is being exempted, and the transaction must be invoiced directly to the nonprofit organization and paid directly via the organization's funds. Purchases for the private benefit of any member of the organization, such as meals and lodgings, are not eligible for exemption.

Therefore, a nonprofit organization's purchases of medical devices would be exempt from sales tax if they are used for the same purpose as that for which the organization is being exempted. [45 IAC 2.2-5-55\(d\)](#) provides the following examples of purchases by nonprofit organizations, and guidance on whether or not the purchases would be exempt, depending on whether they further the nonprofits' purpose:

- (1) A religious organization acquired building materials to construct a new church. The purchase of such materials by the church is exempt since the new church will further the not-for-profit purpose of the organization. The fact that the church basement will occasionally be used for social events does not subject the purchase of construction materials to tax.
- (2) A church sponsors a ski club for its teenage membership. The ski club purchases skis, boots, and poles to be used by the church ski club members on ski trips. These purchases are taxable because the skis, boots, and poles are used primarily to further the social purposes of the ski group and not the exempt purpose of the church.
- (3) A fraternal lodge operated a golf club, a bowling alley, and a lounge where liquor is served. Purchases of property used in these facilities are taxable because the property is used for a purpose other than the not-for-profit fraternal purpose of the lodge. However, the purchase of ceremonial robes for use in fraternal meetings is exempt because the robes are used to further the not-for-profit purpose of the organization.
- (4) Sales of meals at medical society meetings are taxable because the meals are provided for the convenience of the organization and its members. Such sales are taxable even when served in conjunction with a meeting which is furthering their not-for-profit purpose.

Applying the elements of this second requirement to the matter at hand, a nonprofit health care facility's purchase of Company's suite of medical devices would be exempt from sales tax if the devices are used in carrying on the organization's purpose, the purchase is not for the private benefit of any member, and the purchase is invoiced to and paid by the organization. If a nonprofit health care facility meets these requirements, they would need to be registered with the department as a nonprofit, and they would need to provide Company with an Indiana General Sales Tax Exemption Certificate (Form ST-105)<sup>1</sup> before the purchase could be made exempt.

If a nonprofit health care facility does not meet the second requirements under [IC 6-2.5-5-25](#), then the exemption at [IC 6-2.5-5-18](#), which provides an exemption for medical supplies and devices, would not apply to the nonprofit health care facility's purchase. [IC 6-2.5-5-18\(c\)](#) provides the following in pertinent part:

Transactions involving the following are exempt from the state gross retail tax if the end user acquires the property upon a prescription or drug order (as defined in [IC 16-42-19-3](#)) from a licensed practitioner:

- ...
- (1) Durable medical equipment.

- ...
- (3) Prosthetic devices, including artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses,

and contact lenses.

(4) Other medical supplies or devices that are used exclusively for medical treatment of a medically diagnosed condition, including a medically diagnosed condition due to:

- (A) injury;
- (B) bodily dysfunction; or
- (C) surgery.

The exemption requires that the devices must be prescribed to the end user purchaser by a licensed practitioner in order for the transaction to qualify for the exemption. A "prescription" is defined by [IC 6-2.5-1-23](#) as "an order, a formula, or a recipe issued in any form of oral, written, electronic, or other means of transmission by a licensed practitioner authorized by Indiana law." The Department's regulations at [45 IAC 2.2-5-27](#) further clarifies the definition of "prescribed" as follows:

(a) The term "person licensed to issue a prescription" shall include only those persons licensed or registered to fit and/or dispense such devices.

(b) Definition: The term "prescribed" shall mean the issuance by a person described in [subsection (a)] of a certification in writing that the use of the medical equipment[,] supplies[,] and devices is necessary to the purchaser in order to correct or to alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the purchaser's body.

Because [IC 6-2.5-5-18](#) requires that any equipment subject to the exemption must be sold to an end user "upon a prescription or drug order . . . from a licensed practitioner," Company's suite of devices<sup>2</sup> would not be exempt when sold to a nonprofit health care facility. The department has consistently held that doctors, hospitals, and other medical offices and professionals are not eligible to purchase these types of equipment exempt pursuant [IC 6-2.5-5-18](#).<sup>3</sup>

Despite this, the devices may still be exempt under [IC 6-2.5-5-8\(b\)](#), which provides:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

If Company sells the suite of devices to a nonprofit health care facility that does not qualify for the exemption at [IC 6-2.5-5-25](#), and the devices are subsequently sold to an end user patient, then the devices would be exempt from sales tax when sold to the hospital or medical professional under [IC 6-2.5-5-8\(b\)](#). Company would still have to require the nonprofit health care facility to provide Form ST-105 at the time of purchase in order to qualify for this "sale for resale" exemption.

### **RULING**

Company's sale of its suite of medical devices to an Indiana nonprofit health care facility would be exempt under [IC 6-2.5-5-25](#) as long as the nonprofit meets the requirements of that statute, it is registered with the department, and it provides company with an ST-105 (until it is replaced by the NP-1). A nonqualifying nonprofit would not be eligible for the exemption under [IC 6-2.5-5-18](#) because the exemption requires that devices not be sold to the end user patient. However, Company's devices would instead be eligible for the sale for resale exemption under [IC 6-2.5-5-8](#) if the nonprofit health care facility subsequently resells the devices to end user patients.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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<sup>1</sup> At a certain point this year, nonprofits will be required to obtain a special exemption certificate, Form NP-1

(Indiana Nonprofit Sales Tax Exemption Certificate), from the department instead of using the ST-105.

<sup>2</sup> It does not matter whether any of the devices at issue within the suite meet the definition of a prosthetic device, durable medical equipment, or any listed types of devices or equipment within [IC 6-2.5-5-18](#), because the end user is not acquiring the devices with a prescription from a licensed practitioner.

<sup>3</sup> See Revenue Ruling # 2016-01ST ([20160831-IR-045160366NRA](#)); Revenue Ruling # 2015-16ST ([20160330-IR-045160125NRA](#))

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